

# tax *Topics*

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"The mission of the Louisiana Department of Revenue is to administer applicable laws and collect revenues to fund state services."

Cynthia Bridges  
Secretary

www.revenue.louisiana.gov

## Annual Louisiana Sales Tax Holiday: August 1-2, 2008

Most consumer purchases for tangible personal property will be exempt from state sales tax during a two-day Sales Tax Holiday on August 1 & 2, 2008.

The holiday begins at 12:01 a.m. on Friday, August 1, and concludes at midnight on Saturday, August 2.

During the holiday, the first \$2,500 of the purchase price of most tangible property items for non-business use will be exempt from the four-percent statewide sales tax.

The exemption applies to all consumer purchases of tangible personal property, other than motor vehicles and meals sold for consumption on the premises, including to-go orders. Exempt purchases may be made by residents and nonresidents, and all Louisiana dealers are required to participate in the sales tax holiday and allow the state sales tax exemption on eligible sales made during the holiday period.

The exemption does not apply to purchases made for use in a business, trade, or profession. In addition to the specific exclusions for motor vehicles and meals, the state sales tax holiday does not apply to purchases of taxable services such as hotel occupancy; amusement, recreational, and athletic admissions; repairs to tangible personal property; laundry, cleaning, pressing, and dyeing services; vehicle parking; the furnishing of cold storage space; printing services; and telecommunication services or to leases or

rentals of tangible personal property.

To qualify for the sales tax exemption, the purchase must meet one of the following criteria:

- The customer buys and accepts delivery of eligible property during the holiday period;
- The customer places property on layaway during the holiday period;
- The customer purchases property that was previously placed on layaway during the holiday period; or
- The customer places an order for immediate delivery during the holiday period, even if delivery is delayed until after the holiday period, provided that the customer has not requested delayed shipment.

The sales tax holiday does not apply to local sales taxes.

## Electronic Filing Required for Dealers Who Lease or Rent Motor Vehicles

Act 11 of the 2008 Second Extraordinary Session of the Louisiana Legislature enacted Revised Statute 48:77 to dedicate the sales tax collections from motor vehicle leases or rentals to the Transportation Trust Fund effective July 1, 2008.

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**The Baton Rouge Regional Office, hosts a New Business Sales Tax Class each quarter.** The classes are held at the Regional Office, 8585 Archives Ave. Suite 200, Baton Rouge, Louisiana, in the first-floor auditorium. The class begins at 10:00 a.m. and lasts approximately 90 minutes. Classes are scheduled for 2008 on Friday, July 18, and October 17. Anyone interested in attending the class should contact the Regional Office at (225) 922-2300.

**The Lake Charles Regional Office also hosts a New Business Sales Tax Class on the first Wednesday of each month,** except if the Wednesday is a holiday, in which case the class is conducted the next workday. The class begins at 2:00 p.m. and lasts approximately 90 minutes. The Lake Charles Regional Office is located at 1 Lake Shore Drive, Suite 1550, Lake Charles, Louisiana. Anyone interested in attending the class should contact the office at (337) 491-2504. Classes currently scheduled for 2008 are on Wednesday, July 2, and August 6.



Because this information is not separately reported on the sales tax return, Form R-1029, and the return has insufficient space to add the lines needed to report the motor vehicle leases and rentals separately, the Department of Revenue has adopted Emergency Rule LAC 61:III.1511 to require dealers who collect sales tax on motor vehicle leases or rentals to file their sales tax returns electronically using a special sales tax return that includes extra lines for reporting motor vehicle leases and rentals.

La. R.S. 47:1520(A)(1)(d) authorizes the secretary to require electronic filing if the report is required for dedicated fund distribution. Paragraph A(2) provides that the electronic filing requirement be implemented by administrative rule. Subsection B contains penalty provisions for failure to comply.

For the purpose of the electronic filing mandate, a motor vehicle is defined as any self-propelled device that is used to transport people or property on the public highways. Dealers that collect sales tax on motor vehicle leases or rentals will be required file their state sales tax returns electronically effective for the July 2008 sales tax return, which is due August 20, 2008.

Dealers have the following two options for electronic filing:

1. Electronic filing via the Department's Louisiana Taxpayer Access Point (LaTAP) system, or
2. Electronic filing using one of the software vendors listed on the Department's website.

Dealers who use the LaTAP system will be given step-by-step instructions for setting up electronic filing as a motor vehicle lease or rental dealer.

- Gross proceeds from motor vehicle leases and rentals, which include taxable and exempt transactions, should be reported on Line 3(a).
- All other leases, rentals and services should be reported on line 3(b).
- Exempt motor vehicle leases and rentals to federal, state, or local governmental entities should be reported on Schedule A, Line 26-A.
- All other sales and use transactions should be reported as usual.

### **No Change To The Automobile Rental Tax**

La. R.S. 47:551 imposes a three-percent automobile rental tax (two-percent state tax and one-percent local tax) on automobiles rented in Louisiana for periods of 29 days or less. For the purpose of the tax, automobiles are defined as vehicles designed primarily to transport passengers and their baggage, including vans that are rated for less than nine passengers. The tax does not apply to pickup trucks. The automobile rental tax is reported on Form R-1329.

This tax is separate from the four percent state sales tax imposed by La. R.S. 47:301(7) on leases and rentals of tangible personal property, which includes motor vehicles. The sales tax is reported on the sales tax return, Form R-1029.

La. R.S. 48:77 dedicates the sales tax collections from motor vehicle leases or rentals to the Transportation Trust Fund and is not related to the automobile rental tax.

Questions concerning this electronic filing mandate should be directed to the Taxpayer Services Division, Sales Tax Section at (225) 219-7356 or by email to [sales.inquiries@la.gov](mailto:sales.inquiries@la.gov).

### **Laws and Policies: Sales Tax**

#### **Revenue Information Bulletin No. 08-017**

#### **Sales Taxes – Newspapers Excluded from the Definition of Term “Tangible Personal Property”**

Act 480 of the 2007 Regular Session of the Louisiana Legislature enacted La. R.S. 47:301(16)(m) relative to the definition of tangible personal property. Act 480 also repealed La. R.S. 47:305(D)(1)(e) and La. R.S. 47:337.9(C)(10) relative to the state and local sales and use tax exemptions for newspapers. These changes become effective beginning on July 1, 2008. Louisiana Revised Statutes 47:302, et seq., levies a tax upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of each item of tangible personal property. The definition of the term tangible personal property is set forth in La. R.S. 47:301(16). Louisiana Revised Statute 47:301(16)(m) provides that newspapers are excluded from the definition of tangible personal property for purposes of the sales and use taxes imposed by the state or any of its political subdivisions. This change in the law now excludes the sale of newspapers from the collection of sales taxes. Act 480 also repealed La. R.S. 47:305(D)(1)(e) and La. R.S. 47:337.9(C)(10), which are the state and local sales tax exemptions for the sale of newspapers. Under the provisions of La. R.S. 47:302(R), the sales tax exemption for newspapers has been suspended since July 1, 2004, and the suspension was to end on June 30, 2009. During this time period, the sale of newspapers was subject to state sales taxes in the amount of four percent. The sales exemptions for newspapers in La. R.S. 47:305(D)(1)(e) and La. R.S. 47:337.9(C)(10) are to be repealed, and these two statutes will no longer be in existence beginning on July 1, 2008. However, due to the sales tax exclusion in La. R.S. 47:301(16)(m), state and local sales and use taxes should not be collected on the sale of newspapers beginning on July 1, 2008. Questions can be directed to the Department's Taxpayer Services Division at 225-219-7356. Cynthia Bridges Secretary

#### **Revenue Ruling No. 08-009**

#### **Sales Tax Treatment of Licensing Fees Paid to the Manufacturers and Distributors of Electronic Video Bingo Devices**

The purpose of this Revenue Ruling is to clarify the sales tax treatment of agreements for the licensing of software, which operates electronic video bingo devices.

## Issue One

Whether the licensing of software pursuant to an Agreement between a Manufacturer of electronic video bingo devices and a Distributor is the lease of tangible personal property and subject to taxation.

### Facts

Manufacturer is in the business of developing software and manufacturing gaming systems for electronic video devices for the bingo industry in Louisiana. The Manufacturer entered into an agreement with a Distributor appointing it as its exclusive distributor of the electronic video bingo devices for an assigned territory. Distributor was granted a non-transferable, non-assignable license allowing it to market, distribute, and sublicense the electronic video bingo devices and software. However, the Manufacturer retained all of its ownership rights to the software including the intellectual property rights and all proprietary rights. The Distributor is not allowed to reverse engineer or to copy the software, except in certain circumstances, and then the copy must contain the Manufacturer's trademark. The grant of the right to sublicense does not give the Distributor any rights in or to the software operating the electronic video bingo devices. The Distributor cannot assign, transfer, or sublicense the devices or software without the prior consent of the Manufacturer.

The Manufacturer provided the Distributor with the initial product training for proper installation, maintenance, and operation of the electronic video bingo devices and software. The Distributor may order replacement parts from the Manufacturer's discounted published price list. To maintain its exclusive appointment, Distributor is required to order or pay for an agreed upon number of electronic video bingo devices. If Distributor fails to do so, then the Manufacturer has the right to then make the Distributor's appointment nonexclusive.

The Distributor must pay the Manufacturer a daily license fee for each electronic video bingo device sold by it during the term of the agreement. The license fee is charged by the Manufacturer to defray the costs of periodic software enhancements and maintenance, and it will make additional new products available at times. The license fee is due and payable for each day that the device is operational and available for play to the public. The license fee is usually paid to the Manufacturer at the end of each calendar quarter or other time interval. The Distributor is allowed to deduct from the daily license fee a preset service fee per machine. This service fee is allowed to the Distributor in consideration for collection of the licensing fee from its customers and to defray, reimburse, and compensate Distributor for its administrative and office personnel expenses related to collection.

The Agreement between the parties may be terminated in the event either one violates or fails to comply with the conditions. Upon termination of the agreement, the rights and licenses granted to the Distributor are terminated. The

Distributor must cease all use of the software and return any copies of software, documentation, products, and confidential information to the Manufacturer.

### Analysis

A "lease or rental" is defined in Louisiana Revised Statute 47:301(7)(a) as "the leasing or rental of tangible personal property and the possession thereof by the lessee or renter, for consideration without transfer of the title of such property." In this situation, the Distributor has purchased electronic video bingo devices from the Manufacturer and has been granted a license to use software but not title thereto.

Computer software is tangible personal property. La. R.S. 47:301(16)(a) defines "tangible personal property" in part as "personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses." Computer software is defined as a set of statements, data, or instructions to be used directly or indirectly in a computer in order to bring about a certain result. Computer software includes all types of software including operational, applicational, utilities, compilers, and all other forms. La. R.S. 47:301(22). Computer software is recognized as being in one of two groups, "canned" or "custom." "Custom" computer software means software which requires preparation, creation, adaptation or modification by the vendor in order to be used in a specific work environment or to perform a specific function for the user. La. R.S. 47:301(23). Canned computer software is pre-written or "off the shelf" software.

The bingo computer software was pre-written by the Manufacturer for installation in its electronic video bingo devices. The electronic video bingo devices and software are not destined for an ultimate end user for use in a specific environment, as the electronic video bingo devices are sold and the software sublicensed to any number of customers. Therefore, this software fits the definition of canned computer software. The Manufacturer may have several Distributors selling similar electronic video bingo devices in the same sales territory. In some instances, a Distributor may be given the exclusive right to sell devices in an assigned territory based upon a certain number of devices that it has paid for or ordered. However, this does not mean that the software contained in the devices was created for the Distributor, who has been assigned the exclusive territory. Furthermore, a Distributor is usually granted the right to purchase, sell, re-sell and lease the electronic video bingo devices.

The Distributor must pay a licensing fee to the Manufacturer every calendar quarter or after another set interval of time. Distributor already has title to the electric video bingo devices but does not have title to the software. The software is a necessary and integral part of the operation of the electric video bingo devices.

The sale of the electric video bingo device by the Manufacturer cannot be separated from the right to use the device for its designated function. The Department has already issued a ruling for a similar set of facts in Revenue Ruling No. 06-014, in which a manufacturer sold an eye surgical machine to a group of physicians but retained its intellectual property rights to the technology necessary to the operation of the machine. The surgeons had to pay fees to the manufacturer for the use of the patented procedures necessary for operation. The fees paid for the use of the eye surgery machine were treated as a taxable lease transaction. Similar to the physician's loss of the use of the technology necessary to operate the eye surgery machine, the Distributor must cease use of the computer software and return all copies of the software to the Manufacturer upon termination of the agreement.

This transaction between the Manufacturer and the Distributor is distinguishable from a computer software maintenance contract. In Revenue Ruling 04-001, computer software maintenance agreements were described as releases to fix problems ("bug fixes") with the original software purchased, software upgrades provided either without charge or via payment of periodic fees to software developers, or consultation support to licensees to address user-specific problems. Typically, a purchaser buys computer software, which has a license for the current version of the software. Later, the purchaser may choose to upgrade the software for an additional charge. If the purchaser chooses not to upgrade the software, then the purchaser is still able to use the outdated version of the licensed software. In this matter, however, a Distributor who does not pay licensing fees will lose the right to use the electronic video bingo software. Control of the electronic video bingo software reverts back to the Manufacturer, who owns the license. Since title does not pass, the Distributor is leasing the electronic video bingo software.

## Issue Two

Whether licensing of software for use in an electronic video bingo device by a Charitable Gaming Company from the Distributor is taxable as the lease of tangible personal property.

## Facts

A charitable gaming company ("Gaming Company") purchased electronic video bingo devices from a Distributor. As part of the agreement between the two parties, the Gaming Company was granted a non-transferable, non-assignable sublicense by the Distributor. As part of the agreement between the device Manufacturer and the Distributor, the Distributor may sublicense the software. The Manufacturer retains ownership of all intellectual property rights in the electronic video bingo devices, the software, data or information developed by it. The Gaming Company takes title to the purchased electronic video bingo machines but not the software.

The Gaming Company must pay the Distributor a daily fee for the sublicense for each device. The sublicense fees are due beginning in the first month in which the devices are operational and available for the public to play. The Gaming Company must pay the sublicense fee monthly. If the sublicense fees are paid late, then past due fees and interest accrue on the unpaid balance. If the Gaming Company falls more than 30 days past due in paying the sublicense fees, then the Manufacturer, Distributor, or a representative of either will disable the software in the electronic video bingo devices.

## Analysis

As evaluated in the first scenario, the electronic video bingo software is canned software. The electronic video bingo software is the same in the second scenario. The software contained within the electronic video bingo devices is an item of tangible personal property. Title to the software does not pass to the Gaming Company. Monthly payments of the sublicense fee to the Distributor are mandatory for the continued use of the software operating the electronic video bingo devices.

The Distributor leases the software from the Manufacturer and then re-leases it to the Gaming Company by sublicensing it. Re-rentals, re-leases, and subleases are considered taxable leases or rentals. In *Central Marine Service, Inc., v. Collector of Revenue*, 162 So. 2d 81 (La. App. 4 Cir. 1964), the taxpayer rented barges to its customers, who in turn subleased the barges to the ultimate users within the state. The Court found that the lease and sublease were both taxable and held that the act of subleasing was an exercise of any right over tangible personal property. The sublicense of the electronic video bingo software by the Distributor to the Gaming Company, which in turn pays monthly licensing fees to the Distributor, is the lease of tangible personal property for consideration without the transfer of title. The Distributor exercised its right of control of the software by sublicensing it to the Gaming Company. The Gaming Company is exercising the right of control of the software by providing the electronic video bingo devices for customers to play. If the Gaming Company fails to make its monthly payments of the sublicense fee, then it loses the right to use the electronic video bingo software. Therefore, the transaction between the Distributor and the Gaming Company is a sublease or re-rental, which is a taxable transaction, and lease tax is due thereon.

## Ruling

In Issue One, the payment of licensing fees by the Distributor to the Manufacturer for the right to use the software contained in an electronic video bingo device is the lease of tangible personal property that is subject to the four percent state lease tax. The Distributor purchases the electronic video bingo devices and contracts with the Manufacturer for a license for the right to use the software. The Distributor does not receive ownership to the software, because the Manufacturer retains its ownership rights to the software.



In Issue Two, Gaming Company purchases electronic video bingo devices from the Distributor. By agreement with the Manufacturer, the Distributor is allowed to sublicense the right to use the software. The Distributor sublicenses its right to use the electronic video bingo software to the Gaming Company. In return, the Gaming Company pays the Distributor a monthly license fee. The transaction between the Gaming Company and Distributor is a sublease of tangible personal property and subject to the state lease tax in the amount of four percent.

## **Revenue Ruling No. 08-010**

### **Sales Tax Treatment of Electronic Bingo Dabber Devices**

The purpose of this Revenue Ruling is to clarify the sales tax treatment of electronic bingo card dabber devices which are provided for the use of bingo players at charitable bingo gaming sessions.

#### **Issue**

Whether the electronic bingo card dabber devices provided during bingo gaming sessions for the use of bingo players are subject to lease tax.

#### **Facts**

An electronic bingo card dabber device or an electronic dabber device ("dabber") is an electronic device used by a bingo player to monitor bingo cards purchased and electronically mark bingo cards downloaded into the device during the licensed charitable bingo session. At each gaming session, a charitable organization ("Charity") may offer options to allow bingo players to play many bingo cards ("bingo faces") at one time for a set amount. For example, the Charity's game pricing structure may offer 18 games for \$20, 36 games for \$35, 54 games for \$50 or 72 games for \$60. If a player selects 54 or more bingo games, then the player has the option of playing the bingo games by using an electronic dabber. The player does not have to pay an extra fee to use the dabber. The player does not acquire ownership of the dabber. The dabber offers an extra convenience to the player, because it provides the means for the bingo player to electronically mark numbers announced by the bingo caller, compare numbers called to the numbers contained on bingo cards for that session, identify winning bingo patterns, and signal the bingo player when a winning bingo pattern is waiting or received.

Although the Charity will issue the dabber to the player, the law requires that the Distributor's agent download the bingo faces into the dabber device. No more than two dabbers may be issued to any one player. At the conclusion of each session, the player must return the dabber, and then all bingo cards or faces previously downloaded into the device are erased. The Distributor typically charges the Charity a set fee for each dabber utilized during each gaming session.

#### **Analysis**

Louisiana Revised Statute 4:739(C)(1) provides that a distributor shall sell, rent, lease, or otherwise supply or provide any electronic dabber device only to a licensed charitable organization, a qualified association of licensed charitable

organizations, or a licensed distributor. Per La. R.S. 4:739(C)(3), each distributor shall have at least one employee on site during the use of its devices. The licensed distributor shall request payment from the licensed organization immediately after each session in an amount equal to the rental price multiplied by the number of devices used, rented, leased, or otherwise supplied or provided at the session, plus applicable taxes and fees. Payment must be made by the licensed charitable organization immediately after each session and only to the licensed distributor. Per La. R.S. 4:739(B)(1), manufacturers of the dabbers shall sell, rent, lease or supply the devices only to a licensed distributor with delivery of the devices to be made directly to the distributor's facility.

A "lease or rental" is defined in La. R.S. 47:301(7)(a) as "the leasing or rental of tangible personal property and the possession thereof by the lessee or renter, for consideration without transfer of the title of such property." La. R.S. 47:301(16)(a) defines "tangible personal property" in part as "personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses." The dabber is an item of tangible personal property. Due to statutory requirements, manufacturers of the dabbers cannot sell or lease directly to charitable organizations in Louisiana. The manufacturers must sell or lease the dabbers to a licensed Distributor.

If a Distributor leases the dabbers to the Charity, which in turn re-leases the electronic dabbers to a player, both transactions would be considered a taxable lease of tangible personal property. In *Central Marine Service, Inc., v. Collector of Revenue*, 162 So. 2d 81 (La. App. 4 Cir. 1964), the taxpayer rented barges to its customers, who in turn subleased the barges to the ultimate users within the state. The Court found that the lease and sublease were both taxable and held that the act of subleasing was an exercise of any right over tangible personal property.

#### **Ruling**

In this scenario, the Distributor has leased the dabbers to the Charity. The Charity then exercises its right of use over the dabbers by re-leasing them to the player. The Charity pays a fee to the Distributor for every dabber used during each gaming session. Since the Charity pays a fee for every dabber, this is the consideration paid for the lease of an item of tangible personal property. The licensed charitable organization has possession of the dabber but does not take title thereto. The transaction between the Charity and the player is a re-lease, sublease or re-rental, which is a taxable transaction; therefore, four percent state lease tax is due thereon.

## **Individual Income Tax**

### **Revenue Information Bulletin No. 08-016**

#### **Individual Income Taxes Automatic State Extensions for Individual Taxpayers with Federal Extensions**

Louisiana Revised Statute 47:103(D) states that the Secretary of the Department of Revenue may grant a reasonable extension of time to file an indi-

vidual income tax return, not to exceed 1) six months from the date the Louisiana income tax return is due or 2) the extended due date of the federal income tax return, whichever is later. The Secretary may accept a federal filing extension as an extension of time to file a Louisiana income tax return for the same year. The Secretary is also authorized to allow automatic filing extensions for the Louisiana income tax return.

Under the Secretary's authority, for the 2007 tax year, all individual income taxpayers who have received a federal extension will receive an automatic extension of time to file their Louisiana return until November 15th. In order to avoid being billed for delinquent filing penalties, taxpayers are urged to record their federal extensions either by including a copy of their federal extension with their return or by using the Department's online Application for Extension of Time to File at <https://webtax2.rev.louisiana.gov/Extensions/>.

### Revenue Ruling No. 08-007

Taxability of Money Transferred from the Teachers' Retirement System of Louisiana (TRSL) Account into an Individual Retirement Account (IRA)

#### Purpose

The purpose of this Revenue Ruling is to address whether or not money transferred from a TRSL account into an individual retirement account (IRA) will be taxable for Louisiana individual income tax purposes and whether these amounts will be taxable for Louisiana income tax purposes when subsequently withdrawn from the IRA.

#### Background/Analysis

Louisiana Revised Statute 11:704 provides for a state tax exemption for benefits paid out under the provisions of Chapter 2, Subtitle II, of Title 11.

The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Chapter, and the monies in various funds created by this Chapter are exempt from any state or municipal tax, all state income tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, except as provided in La. R.S. 11:291 and 292 and shall be unassignable except as otherwise specifically provided in this Chapter. The exemption provided herein is also applicable to cases filed under any operative chapter of the United States Bankruptcy Code (11 U.S.C.).

Monies in TRSL accounts qualify as retirement benefits or allowances under the statute and are exempt from Louisiana individual income tax when withdrawn from the account. However, disbursements from other retirement accounts such as IRAs are not benefits paid under the provisions of Chapter 2, Subtitle II, of Title 11 of the Revised Statutes, and the Louisiana Revised Statutes do not otherwise provide an exemption for disbursements from IRAs.

#### Ruling

For Louisiana individual income tax purposes, retirement benefits paid under the provisions of Chapter 2, Subtitle II, of Title 11 of the Louisiana Revised Statutes, including disbursements of money from TRSL accounts, are exempt from state taxation. However, once funds are transferred to an IRA, any payments from the IRA are not exempt under the provisions of Chapter 2, Subtitle II, of Title 11.

Tax Topics is a quarterly publication of the Louisiana Department of Revenue. Information contained herein is of a general nature; taxpayers requiring information concerning a specific tax matter should contact the appropriate tax office. Subscription information may be obtained from the Tax Administration Division at the address below, or by calling (225) 219-2690.

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